

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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|--------------------------|---|--------------------------|
| JEFFREY P. DONNELLY, |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 16-cv-30175-MAP |
| |) | |
| TOWN OF WILBRAHAM, |) | |
| PATROLMAN SEAN CASSELLA, |) | |
| SERGEANT SHAWN BALDWIN, |) | |
| CAPTAIN TIMOTHY KANE, |) | |
| TOWN ADMINISTRATOR |) | |
| NICK BREault, and |) | |
| DETECTIVE MICHAEL CYGAN, |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER REGARDING
REPORT AND RECOMMENDATION WITH REGARD TO
DEFENDANTS' MOTION TO DISMISS
(Dkt. Nos. 6 & 22)

March 9, 2018

PONSOR, U.S.D.J.

Plaintiff, proceeding pro se, filed a complaint in the Hampden County Superior Court, alleging a variety of civil rights and tort claims. On October 25, 2016, Defendants, citing the civil rights claims, removed the case to this court on the basis of federal question jurisdiction, under 28 U.S.C. § 1331. On October 28, 2016, Defendants filed a motion to dismiss for failure to state a claim, which the

court referred to Magistrate Judge Katherine A. Robertson for report and recommendation.

Judge Robertson issued her Report and Recommendation (Dkt. No. 22) on February 6, 2018, to the effect that this court should refrain from ruling on Defendants' motion and, instead, remand the case to the state court. Objections by the parties were due on February 20, 2018; none were filed.

Upon de novo review, 28 U.S.C. § 636(b), the court will adopt, in part, the Magistrate Judge's recommendation. The scrupulous job done by Judge Robertson in her R&R obviates the need for an extended recapitulation of her reasoning. Its contents are incorporated into this memorandum and into the court's ruling. On the issue of whether this court has jurisdiction, the Magistrate Judge is entirely correct. Plaintiff disavows pursuing any federal civil rights claims and asserts that his claims are brought exclusively under state law. Accordingly, as Judge Robertson noted, Defendants have not met their burden to establish federal question jurisdiction. Defendants have not objected to her recommendation.

On one minor point, the court will decline to adopt the

Report and Recommendation. Instead of refraining from ruling on the motion, the court will deny the motion without prejudice. This will preserve Defendants' rights and permit them to move to dismiss before the appropriate court.

The Report and Recommendation of the Magistrate Judge (Dkt. No. 22), upon de novo review, is hereby ADOPTED, in part. Defendants' Motion to Dismiss (Dkt. No. 6) is hereby DENIED without prejudice. The clerk is ordered to remand this case to the Hampden County Superior Court.

It is so ordered.

A handwritten signature in cursive script, reading "Michael A. Ponsor". The signature is written in dark ink and is positioned above a horizontal line.

MICHAEL A. PONSOR
U. S. District Judge